

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

MELANIE GABARI,

Plaintiff,

v.

NEW YORK STATE OFFICE OF FAMILY AND
CHILDRENS SERVICES; WESTCHESTER COUNTY
DEPARTMENT OF SOCIAL SERVICES; JEFFERY
MUNSON; GEORGE MUNSON; AND CAROL
MUNSON,

Defendants.

Index No.

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Melanie Gabari, by her attorneys Weitz & Luxenberg PC, brings this action against the New York State Office of Family and Children's Services, Westchester County Department of Social Services, Jeffery Munson, George Munson and Carol Munson alleging, on personal knowledge as to herself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Westchester pursuant to CPLR 503 in that one or more Defendants reside in this County and a substantial part of the events and omissions giving rise to the claim occurred in Westchester County.

PARTIES

4. Plaintiff Melanie Gabari (“Plaintiff”) is an individual residing in Orange County, New York.

5. Defendant New York State Office of Family and Children’s Services (“OCFS”) is a state agency organized and existing under the laws of the State of New York, with its principal office at 52 Washington Street, Rensselaer, New York and a regional office at 117 East Stevens Avenue, Valhalla, Westchester County, New York.

6. Defendant OCFS is the successor agency to what was formerly known as New York State Department of Social Services.

7. Defendant Westchester County Department of Social Services (“Westchester Social Services”) is a county agency organized and existing under the laws of the State of New York, with its principal office at 112 East Post Road, White Plains, Westchester County, New York.

8. At all relevant times, Defendants OCFS and Westchester Social Services oversaw, managed, controlled, directed and operated the foster care system providing for the temporary care of children in Westchester County unable to live with their birth families.

9. At all relevant times, Defendants OCFS and Westchester Social Services managed, supervised, employed, directed and/or controlled individuals endorsed and appointed as foster families in Westchester County including Defendants George Munson, Carol Munson, and Jeffery Munson.

10. At all relevant times, foster families in Westchester County were agents or employees of Defendants OCFS and Westchester Social Services.

11. Defendants George Munson, Carol Munson, and Jeffery Munson are individuals currently residing in Westchester County, New York.

FACTS COMMON TO ALL CLAIMS

12. Plaintiff was a ward of New York State and Westchester County as a child.

13. In approximately 1981, the five year-old Plaintiff was placed into foster care with the Munson family, including Defendants George and Carol Munson as well as their son Defendant Jeffery Munson, at 220 Sherman Avenue in Peekskill, New York.

14. During the times relevant to the allegations set forth herein, Defendants OCFS and Westchester Social Services were responsible for managing, controlling, directing and overseeing foster care placements in Westchester County.

15. Through their positions at, within, or for the other Defendants, Defendants George, Carol, and Jeffrey Munson were put in direct contact with Plaintiff, a minor ward of New York State and Westchester County.

16. In or about 1987, when Plaintiff was approximately eleven years of age, Defendant Carol Munson repeatedly forcibly touched Plaintiff's intimate parts for the purpose of degrading or abusing Plaintiff.

17. Defendant Carol Munson continued to repeatedly forcibly touch Plaintiff's intimate parts for the purpose of degrading or abusing Plaintiff until around or about 1990 when Plaintiff ran away from 220 Sherman Avenue at the approximate age of fourteen.

18. In or about 1990, Plaintiff was sexually abused at 220 Sherman Avenue by Defendant Jeffrey Munson and Plaintiff reported the assault to Defendants George and Carol Munson who took no action and reprimanded Plaintiff.

19. Defendants Carol and Jeffrey Munson used encounters, gained through their position in the foster care system which granted them access to minor children, when Plaintiff was approximately eleven to fourteen years of age, to sexually assault, sexually abuse, forcibly touch, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

20. In late 1990 approximately, Plaintiff ran away from 220 Sherman Avenue after being sexually abused by Defendant Jeffrey Munson and Plaintiff reported the sexual abuse and molestation she suffered to Defendant Westchester Social Services who tried to return Plaintiff to 220 Sherman Avenue.

21. At all times material hereto, Defendants George, Carol, and Jeffrey Munson were under the management, supervision, employ, direction and/or control of Defendants OCFS and Westchester Social Services.

22. At all times material hereto, Plaintiff was under the care of a foster care case worker who was responsible for ensuring Plaintiffs safety and well-being.

23. At all times material hereto, Plaintiff's foster care case worker was under the management, supervision, employ, direction and/or control of Defendants OCFS and Westchester Social Services.

24. Defendants OCFS, Westchester Social Services and George and Carol Munson knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Defendants Carol and Jeffrey Munson who sexually abused and molested Plaintiff.

25. Defendants OCFS and Westchester Social Services had the responsibility to manage, supervise, control and/or direct foster families in Westchester County, and specifically had a duty not to aid violent deviants such as Defendants Carol and Jeffrey Munson by assigning, maintaining, and/or appointing them to positions with access to vulnerable minors.

26. Defendants OCFS, Westchester Social Services, and George and Carol Munson had a duty to the Plaintiff to ensure that Defendants did not offer opportunities for violent deviants to approach and assault the vulnerable minor.

27. Defendants OCFS, Westchester Social Services, and George and Carol Munson knew and/or should have known that Defendants Carol and Jeffrey Munson used their positions in the foster care system to harm minor children, including Plaintiff, and to form a relationship that could be, and was, used to provide opportunities for sexual abuse and molestation.

28. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendants' actions, as well as other damages related thereto, as a result of her childhood sexual abuse and molestation.

29. As a direct result of Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendants' sexual abuse and molestation, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm she suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction (As to Defendants OCFS and Westchester Social Services)

30. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

31. Defendants OCFS and Westchester Social Services at all relevant times represented or otherwise indicated to Plaintiff that she would be physically safe while in the presence of individuals assigned to temporarily care for her in the foster care system. Defendants OCFS and Westchester Social Services entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the care of a foster family Plaintiff would be kept reasonably safe and that that a foster family member would not sexually abuse Plaintiff.

32. Defendants OCFS and Westchester Social Services owed a duty of care to all vulnerable minor persons, including Plaintiff, who were likely to come in contact with Defendants Carol and Jeffrey Munson or were under the supervision of Defendants Carol and George Munson, to ensure that Defendants Carol and Jeffrey Munson did not use their assigned position to injure minors by sexual assault, sexual abuse, forcible touching, or sexual contact in violation of the laws of the State of New York.

33. Defendants OCFS and Westchester Social Services knew or should have known of Defendants Carol and Jeffrey Munson's propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of the injuries' occurrence.

34. The sexual abuse of children by adults, including foster family members, is a foreseeable result of negligence.

35. Defendants Carol and Jeffrey Munson sexually assaulted, sexually abused, forcibly touched, and/or had sexual contact with Plaintiff while assigned as her foster family in Westchester County, New York.

36. Defendants OCFS and Westchester Social Services negligently hired, retained, directed, and supervised Defendants Carol and Jeffrey Munson as they knew or should have known that Defendants Carol and Jeffrey Munson posed a threat of sexual abuse and molestation children.

37. Defendants OCFS and Westchester Social Services were negligent in failing properly to supervise Defendants Carol and Jeffrey Munson.

38. At all times material hereto, Defendants OCFS and Westchester Social Services were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

39. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

40. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally, and/or in the alternative, for compensatory damages, and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION
Negligence/Gross Negligence
(As to Defendants OCFS and Westchester Social Services)

41. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

42. At all times material hereto, with regard to the allegations contained herein, Defendants Carol and Jeffrey Munson were under the supervision, employ, direction and/or control of Defendants OCFS and Westchester Social Services.

43. Defendants OCFS and Westchester Social Services owed Plaintiff, at the relevant times, a minor and ward of New York State and Westchester County, a duty to protect her from Defendants Carol and Jeffery Munson's violent deviancy and the consequent damages, both prior to and/or subsequent to Defendants Carol and Jeffrey Munson's misconduct.

44. Defendants OCFS and Westchester Social Services knew, or were negligent in not knowing, that Defendants Carol and Jeffrey Munson posed a threat of sexual abuse and molestation to children.

45. The acts of Defendants Carol and Jeffrey Munson described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of their respective employment, appointment, assignment, and/or agency with Defendants OCFS and Westchester Social Services.

46. Defendants OCFS and Westchester Social Service's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

47. Defendants OCFS and Westchester Social Services gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others; failed adequately to supervise the activities of Defendants Carol and Jeffrey Munson; permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

48. At all times material hereto, Defendants OCFS and Westchester Social Services were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

49. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

50. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION
Breach of Non-Delegable Duty
(As to Defendants OCFS, Westchester Social Services, George Munson and Carol Munson)

51. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

52. Plaintiff, when she was a minor and ward of New York State, was placed in the care and supervision of the Defendants OCFS, Westchester Social Services, George Munson and Carol Munson for the purposes of, *inter alia*, providing Plaintiff with a safe and nurturing environment. There existed a non-delegable duty of trust between Plaintiff and Defendants.

53. Plaintiff was a vulnerable child when placed within the care of the Defendants OCFS, Westchester Social Services, George Munson and Carol Munson.

54. As a consequence, Defendants OCFS, Westchester Social Services, George Munson and Carol Munson were in the best position to prevent Defendants Carol and Jeffrey Munson's sexual abuse and molestation of Plaintiff, to learn of that sexual abuse and molestation of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Defendants Carol and Jeffrey Munson's

sexual abuse and molestation of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

55. By virtue of the fact that Plaintiff was sexually abused and molested as a minor child entrusted to the care of the Defendants OCFS, Westchester Social Services, George Munson and Carol Munson, Defendants breached their non-delegable duty to Plaintiff.

56. At all times material hereto, Defendants Carol and Jeffrey Munson were under the supervision, employ, direction and/or control of Defendants OCFS, Westchester Social Services, George Munson and Carol Munson.

57. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

58. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty
(As to Defendants OCFS, Westchester Social Services, George Munson and Carol Munson)

59. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

60. While she was a minor, Plaintiff was entrusted to the control and supervision of Defendants George and Carol Munson. During the times that Plaintiff was entrusted to Defendants

George and Carol Munson, Defendants George and Carol Munson were under the supervision and control of Defendants OCFS and Westchester Social Services.

61. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants OCFS, Westchester Social Services, George Munson and Carol Munson. This relationship is based on the entrustment of the Plaintiff while she was a minor child to the care and supervision of Defendants OCFS, Westchester Social Services, George Munson and Carol Munson. This entrustment of the Plaintiff to the care and supervision of the Defendants OCFS, Westchester Social Services, George Munson and Carol Munson, while Plaintiff was a minor child, required these Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect her due to her infancy and vulnerability.

62. Pursuant to their fiduciary relationship, Defendants OCFS, Westchester Social Services, George Munson and Carol Munson, were entrusted with the well-being, care, and safety of Plaintiff.

63. Pursuant to their fiduciary relationship, OCFS, Westchester Social Services, George Munson and Carol Munson, assumed a duty to act in the best interests of Plaintiff.

64. Defendants OCFS, Westchester Social Services, George Munson and Carol Munson breached their fiduciary duties to Plaintiff.

65. At all times material hereto, Defendants OCFS, Westchester Social Services, George Munson and Carol Munson were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

66. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

67. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress
(As to Defendants OCFS and Westchester Social Services)

68. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

69. As described above, the actions of OCFS and Westchester Social Services, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

70. Defendants OCFS and Westchester Social Services' actions endangered Plaintiff's safety and caused her to fear for her own safety.

71. As a direct and proximate result of Defendants OCFS and Westchester Social Services' actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered severe injuries and damages described herein, including but not limited to mental and emotional distress.

72. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION
Breach of Duty *in Loco Parentis*
(As to Defendants OCFS, Westchester Social Services, George Munson and Carol Munson)

73. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

74. While she was a minor, Plaintiff was entrusted to the control and supervision of Defendants George and Carol Munson, foster parents appointed by the Defendants OCFS and Westchester Social Services. During the times that Plaintiff was entrusted to Defendants George and Carol Munson, Defendants George and Carol Munson were under the supervision and control of Defendants OCFS and Westchester Social Services. These Defendants owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

75. Defendants OCFS, Westchester Social Services, George Munson and Carol Munson breached their duty to act *in loco parentis*.

76. At all times material hereto Defendants OCFS, Westchester Social Services, George Munson and Carol Munson's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

77. As a direct result of Defendants OCFS, Westchester Social Services, George Munson and Carol Munson's conduct, Plaintiff has suffered the injuries and damages described herein.

78. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

**SEVENTH CAUSE OF ACTION
Sexual Offenses
(As to Defendants Carol and Jeffrey Munson)**

79. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

80. Defendants Carol and Jeffrey Munson did sexually assault, sexually abuse, forcibly touching and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

81. By sexually assaulting, sexually abusing, forcibly touching, and/or having sexual contact with Plaintiff, Defendants Carol and Jeffrey Munson placed Plaintiff in imminent and reasonable apprehension of harmful and offensive contact.

82. By sexually assaulting, sexually abusing, forcibly touching, and/or having sexual contact with Plaintiff, Defendants Carol and Jeffrey Munson acted so as to cause unjustified, harmful and offensive physical contact with Plaintiff.

83. As a direct result of Defendants' conduct Plaintiff has suffered the injuries and damages described herein.

84. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**EIGHTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(As to Defendants Carol and Jeffrey Munson)**

85. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

86. Defendants Carol and Jeffrey Munson's actions endangered Plaintiff's safety and caused her to fear for her own safety.

87. As a direct and proximate result of Defendants Carol and Jeffrey Munson's actions Plaintiff suffered severe injuries and damages described herein; including but not limited to mental and emotional distress.

88. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: September 19, 2019

New York, New York

Respectfully Submitted,

/s/ Samantha Breakstone
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ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF WESTCHESTER)

I, the undersigned, am an attorney admitted to practice in the Courts of New York State, and say that:

I am the attorney of record or of counsel with the attorney(s) of record for the plaintiff.

I have read the annexed SUMMONS AND VERIFIED COMPLAINT and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief. As to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge is based upon the following:

Interviews and/or discussions held with the plaintiff(s) and papers and/or documents in the file.

The reason I make this affirmation instead of the plaintiff is because said plaintiff resides outside the county from where your deponent maintains his office for the practice of law.

Dated: New York, NY
September 19, 2019



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